

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Juan Arango	Team: Squad #9	CCRB Case #: 202003167	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/01/2020 12:35 AM	Location of Incident: E train platform (WTC stop)	Precinct: 01	18 Mo. SOL 11/1/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 05/11/2020 11:32 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/11/2020 11:32 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An Officer			
2. POM Johnpatric Harrigan	18227	950561	TB ATU
3. POM Nicholas McKeever	25164	950867	TB ATU

Officer(s)	Allegation	Investigator Recommendation
A.POM Nicholas McKeever	Force: Police Officer Nicholas McKeever used physical force against § 87(2)(b)	
B.POM Nicholas McKeever	Force: Police Officer Nicholas McKeever used physical force against § 87(2)(b)	
C.POM Johnpatric Harrigan	Force: Police Officer Johnpatric Harrigan used physical force against § 87(2)(b)	
D.POM Johnpatric Harrigan	Force: Police Officer Johnpatric Harrigan used physical force against § 87(2)(b)	
E.POM Nicholas McKeever	Force: Police Officer Nicholas McKeever used physical force against § 87(2)(b)	
F. An Officer	Discourtesy: An officer acted discourteously toward § 87(2)(b)	
G.POM Johnpatric Harrigan	Abuse: Police Officer Johnpatric Harrigan did not obtain medical treatment for § 87(2)(b)	
H.POM Nicholas McKeever	Abuse: Police Officer Nicholas McKeever did not obtain medical treatment for § 87(2)(b)	
I.POM Nicholas McKeever	Untruthful Stmt.: Police Officer Nicholas McKeever provided a misleading official statement to the CCRB.	

### Case Summary

On May 1, 2020, § 87(2)(b) filed the following complaint with IAB, generating original log § 87(2)(b). This complaint was received at the CCRB on May 11, 2020 via log § 87(2)(b).

On May 1, 2020, at approximately 12:35 a.m., § 87(2)(b) who is homeless, was sleeping inside the E train, when the train arrived at the World Trade Center subway station in Manhattan. Different officers, including PO McKeever and PO Harrigan, both from the Transit Bureau Anti-Terrorism Unit entered the subway car asked everyone to leave the train. PO McKeever woke up § 87(2)(b) and informed him that he had to leave. At some point, PO McKeever allegedly grabbed § 87(2)(b) by his arm, placed it behind his back and began to push him towards the subway car door (**Allegation A: Force – Push**, § 87(2)(g)). After § 87(2)(b) exited the subway car, PO Harrigan also grabbed § 87(2)(b) by his arms. Both officers then pushed him through the platform, towards the turnstiles (**Allegations B and C: Force – Push**, § 87(2)(g)). Upon approaching the turnstile, PO McKeever and PO Harrigan pushed § 87(2)(b). As a result, § 87(2)(b) went forward, hit the turnstiles, and fell to the ground (**Allegations D and E: Force: Physical Force – Push**, § 87(2)(g)). Right after, an officer allegedly brought § 87(2)(b) plastic bag and threw it to the ground where § 87(2)(b) landed (**Allegation F: Discourtesy – Action**, § 87(2)(g)).

After § 87(2)(b) fell to the ground, he yelled in pain and allegedly requested an ambulance, but PO McKeever and PO Harrigan walked away. § 87(2)(b) called 911 and requested an ambulance (**Allegations G and H: Abuse of Authority: Refusal to obtain medical treatment**, § 87(2)(g)). At the end, § 87(2)(b) was removed to the hospital.

During the CCRB interview on January 15, 2021, PO McKeever allegedly did not remember an action taken during the incident despite being presented with BWC (**Allegation I: Untruthful Statement- Misleading statement**, § 87(2)(g)).

§ 87(2)(b) was not arrested or issued any summonses.

The investigation obtained Body-Worn Camera footage for this incident (**Board Review 01, 02, and 03**).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Nicholas McKeever used physical force against § 87(2)(b).**

**Allegation (B) Force: Police Officer Nicholas McKeever used physical force against § 87(2)(b).**

**Allegation (C) Force: Police Officer Johnpatric Harrigan used physical force against § 87(2)(b).**

During his CCRB interview, § 87(2)(b) explained that while he was sleeping inside the E train, PO McKeever stood up in front of him and told him he had to leave (**Board Review 04**). § 87(2)(b) sat up and put on his shoes. Approximately one minute after § 87(2)(b) sat up, he got off the seat and tried to reach his plastic bag with his personal belongings. However, PO McKeever grabbed § 87(2)(b) by his left wrist and prevented him from taking his bag. PO McKeever twisted § 87(2)(b) left arm and placed it behind his back while holding it with one hand. PO McKeever then used his other hand and placed it behind § 87(2)(b) back and pushed § 87(2)(b) towards the subway car door. After exiting the subway car, PO Harrigan, who was standing on the platform, grabbed § 87(2)(b) by his right arm and placed it behind his back. PO McKeever began to push § 87(2)(b) on his back along the platform. § 87(2)(b) could not walk fast because of an underlying condition in his foot known as hammer toe, which causes severe pain. § 87(2)(b) yelled at the officers and told them that he could not walk fast because of his toe and was experiencing a lot of pain. However, the officers ignored § 87(2)(b) complaint and continued pushing him through the platform.

At the 1:00-minute mark of PO McKeever's BWC footage, PO McKeever enters the

subway car and approaches § 87(2)(b) who is outstretched on one of the seats, and says, “Sir. Off the train, off the train” (Board review 05). § 87(2)(b) immediately sit ups as he looks around. § 87(2)(b) then looks at PO McKeever and PO McKeever tells him, “You gotta get off.” Right after, § 87(2)(b) begins searching into a white plastic bag and removes a black plastic bag. PO McKeever asks, “Are those your shoes?” as § 87(2)(b) appears to remove a pair of shoes from it. Right after, PO McKeever asks § 87(2)(b) “You want BRC to help you?” In response, § 87(2)(b) shakes his head; to which, PO McKeever adds, “Alright, then. You gotta take off out of the station, okay?” At the 1:40-minute mark, § 87(2)(b) is captured looking at the other officers as he continues sitting on the bench. Right after, PO McKeever tells § 87(2)(b) “Come on. Sir.” § 87(2)(b) looks at him and makes an inaudible statement involving the word, “Why.” PO McKeever replies to § 87(2)(b) “You gotta get out of the station. You can’t be laying on the train like that.” § 87(2)(b) continues speaking to PO McKeever and making inaudible statements as PO McKeever replies, “Because I said, you can’t be in here.” § 87(2)(b) simultaneously says, “Take me in jail;” to which, PO McKeever replies, “What? You are being recorded okay? You gotta get off.”

Right after, at the 2:00-minute mark of PO McKeever’s BWC footage, § 87(2)(b) raises his voice, gets off the bench and continues saying, “Take me in jail. Take me in jail. Why I gotta go outside?” (Board Review 05). PO McKeever says, “You gotta leave the station. You have to.” At the 2:05-minute mark, § 87(2)(b) grabs his white plastic bag off the seat and exits the subway car on his own as he continues saying, “Take me in jail. Take me in jail.” PO Harrigan appears standing outside of the subway car and can be seen wearing black gloves. PO McKeever follows § 87(2)(b). After § 87(2)(b) exits the subway car, PO McKeever says, “Let’s go. I am going to walk you out,” grabs § 87(2)(b) by his left arm and begins to push him while § 87(2)(b) says, “Take it. Take it.”

At the 2:24-minute mark of PO Harrigan’s BWC footage, as soon as PO McKeever grabs § 87(2)(b) and begins to push him, § 87(2)(b) is heard snorting as if he was going to spit (Board Review 06). A male voice yells in the background, “Do not spit.” PO Harrigan then holds § 87(2)(b) by his right arm while both officers push § 87(2)(b) along the platform while holding his arms firmly.

Patrol Guide Procedure 212-20 (Board Review 07) – “When necessary to eject a passenger: 1) Advise passenger of ejection and reason. 2) Permit passenger, who voluntarily leave the property or shows a willingness to do so, to leave without interference. 3) Use no more force than is necessary to effect the ejection, if the passenger refuses to leave. Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to affect the ejection.”

§ 87(2)(g)

Although § 87(2)(b) actions showed willingness to leave the subway station, § 87(2)(b) statements did not, § 87(2)(g) (b)

**Allegation (D) Force: Police Officer Johnpatric Harrigan used physical force against § 87(2)(b).**

**Allegation (E) Force: Police Officer Nicholas McKeever used physical force against § 87(2)(b).**

**Allegation (F) Discourtesy: An officer acted discourteously toward § 87(2)(b).**

During his CCRB interview, § 87(2)(b) stated that after walking past approximately four

to five subway cars, he and the officers reached the turnstiles (**Board Review 04**). PO Harrigan released § 87(2)(b) arm and PO McKeever pushed § 87(2)(b) on his back. § 87(2)(b) went forward, hit the turnstiles, fell and landed on the ground while facing downward. As a result, § 87(2)(b) hit his forehead, his left toe and obtained a cut on his left ankle, that resulted from the impact against the ground. § 87(2)(b) ankle and left toe got swollen and he sustained a hematoma on his left toe as well. After PO McKeever and PO Harrigan pushed § 87(2)(b) another officer, PO3, allegedly approached § 87(2)(b) with his bag and threw it onto the ground where he was.

At the 3:32-minute mark of PO Harrigan's BWC footage, PO McKeever and PO Harrigan arrive at the turnstiles while they both continue guiding § 87(2)(b) and grabbing him by both of his arms (**Board Review 06**). Both officers and § 87(2)(b) turn their body to their left and face one of the turnstiles. They are standing approximately one foot away from the turnstile. Right after, PO Harrigan moves his left hand from § 87(2)(b) right shoulder and places it on § 87(2)(b) midback while PO McKeever continues holding § 87(2)(b) by his left wrist. PO McKeever says, "Out of the station" and both officers make a forward motion with their hands on § 87(2)(b) back. As a result, § 87(2)(b) goes forward, passes through the turnstile by hitting the arm of the turnstile, and falls onto the ground, landing on the left side of his body. § 87(2)(b) had his plastic bag with him at the time.

During his CCRB interview, PO McKeever stated that § 87(2)(b) was being physically resistant to exiting the subway station by flailing his arms and cursing them out (**Board Review 08**). PO McKeever did not independently acknowledge that § 87(2)(b) was pushed as he went through the turnstile.

PO Harrigan stated that while being ejected § 87(2)(b) pushed back at him and PO McKeever (**Board Review 10**). When the officers and § 87(2)(b) approached the turnstiles, § 87(2)(b) continued to push back against the officers. As a result, PO Harrigan pushed § 87(2)(b) through the turnstile. PO Harrigan did not remember if there was any other reason why he pushed § 87(2)(b). When asked what else § 87(2)(b) was doing with his body besides pushing back, PO Harrigan stated that he was twisting his torso. PO Harrigan did not remember what PO McKeever was doing at the time of the push or if he was making physical contact with § 87(2)(b).

Patrol Guide Procedure 212-20 (Board Review 07) – "When necessary to eject a passenger: 1) Advise passenger of ejection and reason. 2) Permit passenger, who voluntarily leaves the property or shows a willingness to do so, to leave without interference. 3) Use no more force than is necessary to effect the ejection, if the passenger refuses to leave. Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to affect the ejection."

As captured in BWC footage, PO McKeever and PO Harrigan were able to get § 87(2)(b) from one end of the subway station to the turnstile area without needing to use a greater amount of force than grabbing him by his arms and guiding him through the platform. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g) PO Harrigan's BWC footage shows the entire incident and clearly shows that § 87(2)(b) grabbed all his belongings and had it in his hands while being pushed and no one else approached him or threw anything at him. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (G) Abuse of Authority: Police Officer Johnpatric Harrigan did not obtain medical treatment for § 87(2)(b)**

**Allegation (H) Abuse of Authority: Police Officer Nicholas McKeever did not obtain medical**



treatment for § 87(2)(b).

§ 87(2)(b) stated that after he fell to the ground, he began to yell in pain and asked for an ambulance; however, no one paid attention to him (**Board Review 04**). PO McKeever and PO Harrigan did not say anything to § 87(2)(b) and walked away along the platform in the direction of where they came from. While § 87(2)(b) was on the ground, he called 911 and requested an ambulance. Approximately 20 minutes later, EMS arrived on scene and transported him to the hospital.

PO McKeever's second BWC footage begins at 4:43:36 a.m. while he and PO Harrigan are in front of § 87(2)(b) who is laying down on the ground, next to the turnstile where he was pushed (**Board Review 11**). At the 3:53-minute mark (4:47:29 timestamp) of PO McKeever's second BWC footage, PO McKeever picks up his radio and says, "Can you have a bus respond to chambers on the A." At the 21:05-minute mark (5:04:41 timestamp) two EMTs arrived on scene.

§ 87(2)(g) PO McKeever's BWC footage captures PO McKeever requesting an ambulance for § 87(2)(b) over the radio, § 87(2)(g)

**Allegation (I) Untruthful Statement: Police Officer Nicholas McKeever provided a misleading official statement to the CCRB.**

It is undisputed that PO McKeever was facing § 87(2)(b) after § 87(2)(b) was pushed and fell to the ground.

During his CCRB interview on January 15, 2021, PO McKeever initially testified that once they approached the turnstile with § 87(2)(b) "They exited him through the turnstile" and they walked away to continue ejecting other people and after they returned to the turnstile, they observed § 87(2)(b) on the ground (**Board Review 08**). When he was asked to clarify what he meant by "exiting him through the turnstile," PO McKeever said, "We escorted him through the turnstile because he did not want to exit." PO McKeever said § 87(2)(b) was being physically resistant by flailing his arms and cursing them out. PO McKeever was then asked if § 87(2)(b) was standing or on the ground the last time, he saw him, and PO McKeever said that he only remembered "putting § 87(2)(b) through the turnstile. When asked to clarify, PO McKeever said that he was making physical contact with § 87(2)(b) when he went through the turnstile. Upon providing PO McKeever with the push allegation, he stated that he did not remember any pushing. When presented with PO Harrigan's BWC footage that captures when § 87(2)(b) is pushed and asked if the video brought back his independent recollection of this portion of the incident, PO McKeever said, "I just remember moving him from the station, that's it" (**Board Review 09**). After describing into the record how § 87(2)(b) was pushed and fell to the ground, PO McKeever was given an opportunity to add something to his statement; to which, he said no. PO McKeever was also presented with his BWC footage, which captures the turnstile and § 87(2)(b) after he falls to the ground. When asked if he was aware that § 87(2)(b) fell to the ground after watching the video, PO McKeever said, "I just remember putting him through the turnstile." PO McKeever then said that he did not remember the time when § 87(2)(b) fell to the ground.

**Patrol Guide Procedure 203-08 (Board Review 13).** A misleading statement is a statement intended to misdirect the investigation and alter the narrative by making repeated claims of not recalling the incident when a reasonable person in a similar circumstance would have recalled.

PO McKeever provided a full statement regarding this incident; however, even after being shown video footage, he continued to deny recalling pushing § 87(2)(b) through the turnstile and repeatedly claimed that he only remembered "putting § 87(2)(b) through the turnstile." § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 14**).
- PO McKeever has been a member of service for ten years and this is the first CCRB complaint to which he has been a subject (**see officer history**).
- PO Harrigan has been a member of service for ten years and has been a subject in two other CCRB complaint, none of which were § 87(2)(g) (**see officer history**).

**Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation.
- As of August 4, 2021, the NYC Office of the comptroller has no record of a Notice of Claim being filed with regards to this complaint (**Board Review 16**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 9

Investigator:	<u>Juan Arango</u>	<u>Inv. Juan Arango</u>	<u>11/03/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Monique West</u>	<u>IM Monique West</u>	<u>11/08/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date